Petition

81-1571

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. _____

GERALDINE G. HALL, Appellant

v.

COMMISSIONER OF INTERNAL REVENUE, Appellee

Petition for a Writ of Certiorari
to the
Supreme Court of the United States

Geraldine G. Hall, pro se

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QUESTIONS PRESENTED

1. Whether the Louisiana "head and master" law is unconstitutional to the extent that it permitted the IRS-Respondent to hold petitioner individually liable for the income tax due on 1/2 of her husband's income while it gave her husband automatic and exclusive mastership of the community (with sole power to encumber and/or alienate it) and it barred her from asking for even an accounting thereof?
2. Whether the IRS can deny petitioner, a U.S. citizen, the constitutional rights and protection afforded other U. S. citizens because she happens to be a black married female residing in the state of Louisiana?
3. Whether the IRS has the right to hold petitioner who prepared a separate tax return, accountable for facts about her husband's income tax which she has no legal right to force him to divulge and which the IRS withholds from her on the basis of the privacy of the income tax?

Parties to the Proceeding in the Court of Appeals

The only parties to the proceedings in this case before the Court of Appeals for the Fifth Circuit are listed in the caption for this petition.

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I. Petitioner was denied due process and equal protection of the laws by the court's refusal to rule on the federal question which was properly placed before it and which was pivotal to the case.

II. Appellate Court erred in affirming trial court's decision for respondent using the "not clearly erroneous" rule; this constituted an abuse of discretion and prejudicial error, and a denial of petitioner's constitutional rights.

III. The decision in this case properly belongs to this Forumn and is ripe for judicial scrutiny.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. 81-4085

GERALDINE G. HALL, Appellant

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petition for a Writ of Certiorari

to the Supreme Court of the United States

The petitioner, Geraldine G. Hall, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on September 15, 1981.

OPINION BELOW

The Judgment of the trial court, rendered in the Tax Court of the United States, appears in the appendix hereto. The opinion of the United States Court of Appeals, Fifth Circuit, affirming the

trial court's decision, is reprinted in the appendix hereto. It is marked DO NOT PUBLISH.

JURISDICTION

The Judgment of the trial court was filed and entered on December 30, 1980. The Per Curiam Opinion of the United States Court of Appeals, for the Fifth Circuit was filed September 15, 1981.

This appeal is being docketed in this Court within the proper time from the filing of the decision and opinion of the Fifth Circuit Court of Appeals. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1), and the Supreme Court Rules, Section 19 (1) (b).

CONSTITUTIONAL PROVISIONS AND RULES

Our Constitution is built upon certain basic principles, among which are: the principle of "checks and balances" of the supreracy of the law, of freedom and equality, and the principle that rights of the people are to be protected by the Government.

Fifth Amendment to the U. S. Constitution:

"No person shall be...deprived of life, liberty, or property, without due process of law..."

Fourteenth Amendment to the U. S. Constitution:

"....nor shall any State deprive any person of of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Eighth Amendment to the U. S. Constitution:

"...nor cruel and unusual punishment inflicted."

La. Civ. Code:

Art. 2404 and Art. 2334:

The husband, in his role as master of the community of gains, has the sole use and control of the community assets, as well as enjoyment and the power to dispose of such assets, and thus he has perfect ownership, while the wife, lacking an element of ownership, the use or control of community assets, is an imperfect owner.

...the wife is not personally liable out of her separate property for such obligations.

During the marriage, the wife has no right to an accounting of the community property.

Fines and penalties are the separate debt of the person fined or penalized.

A debt classified as a separate debt of the wife can only be satisfied out of her separate property, not out of any part of the community property.

The community property is liable for any and all debts made by the husband, regardless of their classification.

Liability on Joint Tax Return:

Husband and wife are liable jointly, and in addition, each is liable for the entire tax on a joint return.

One joint notice for any deficiency in tax is proper where a joint return is filed...

The taxpayer bears the burden of proving his entitlement to a particular deduction. 142(A)

... Article 2404 of the Louisiana Civ. Code violates the equal protection clause of the fourteenth amendment... U.S. Circuit Ct. of Appeals--Fifth Circuit, December 12, 1979

STATEMENT OF THE CASE

Respondent determined a deficiency in petitioner's Federal income tax for the taxable year 1976 in the amount of $1,135.39 and assessed an additional tax in the amount of $30.39 under sec. 6651 (a) IRS, for failure to file a timely return without reasonable cause. Petitioner invoked the jurisdiction of the Tax Court under 6213 (a) by the filing of a proper petition in which she raised the question of the constitutionality of the Louisiana "head and master" law and the IRS's arbitrary interpretation and application of this law so as to deny the petitioner of "due process" and "equal protection of the laws", and the case was heard in Tax Court in New Orleans, Louisiana on March 10, 1980, before Honorable Samuel B. Sterrett who found for the Respondent in a judgment and decision filed December 30, 1980.

The petitioner appealed this decision to the Court of Appeals for the Fifth Circuit under Rule 3. On September 15, 1981, the appellate court affirmed the lower court's decision in a per curiam opinion

marked Do Not Publish.-- The petitioner now seeks a writ of certiorari for the highest tier of justice to review the appellate court's decision.

STATEMENT OF FACTS

Geraldine G. Hall, a black married woman domiciled in Louisiana, petitioned the Tax Court concerning an alleged tax deficiency for her individual tax for the year 1976, which the IRS claimed she owed. (Tr. 4) The petitioner had filed a proper return for 1976, using "married, filing separately" as her status. The alleged deficiency arose as a result of the Commissioner's determination that the petitioner should be held individually tax-accountable for the 1/2 of her husband's income which the IRS had graciously "given" her "on paper" , and that she must file a joint return with her husband, or what in effect would be a "joint" return. (Entire Tr., Reply Br. 7) Information about husband's return was withheld from petitioner before trial on the grounds of there being "a possible privacy act problem with giving it to her apart from the Court trial." (Tr. 6, passim) At trial,

the trial judge refused to make even an humble effort to deal with the constitutionality issue, and ignored this issue throughout the proceeding, despite the protestation of the petitioner. The IRS succeeded in having the trial amount to little more than another, but this time public, audit[1] of not only the petitioner but also of her husband (who was not a party to the trial and who in fact appeared as a "star" witness for the respondent) in an effort to destroy the credibility of the petitioner, to squander the Court's time, and divert attention from the issues. Since, and as a direct result of, trial, husband has become hostile to petitioner.

REASONS FOR GRANTING THE WRIT

The instant case is not from any abstract disagreement between the petitioner and the IRS respondent over the constitutionality of Art. 2404 and Art. 2334, but from the respondent's attempt to hold the petitioner separately and individually responsible for an alleged tax deficiency which they claimed she owed. The respondent arrived at this deficiency after "giving'

[1] See Preliminary Statement, pp. 1, 2 of Petitioner's Br. to Tax Ct. for events leading up to this.

the petitioner on paper 1/2 of her husband's income for 1976 and holding her tax accountable for that amount of money. IRS insisted that she would have to file a joint return with her husband or what in effect would be a "joint" return. In support of their position, IRS alleged that they were simply upholding the Louisiana community property law, citing Art. 2404 and Art. 2334 for their support. She petitioned the Tax Court to look at the constitutionality of the Louisiana community property law which the IRS respondent professed to be upholding. When the trial court ignored the federal question, she appealed to the Appellate Court for the Fifth Circuit, which likewise ignored the question.

I. <u>The appellate court erred in refusing to rule on the federal question raised by the petitioner.</u>

A. The petitioner expressly declared in Tax Court, a federal court, that she was invoking the Constitution of the United States in contesting the alleged individual tax deficiency which the IRS claimed she owed, citing the fourteenth amendment as being one of the con-

stitutional provisions on which she relied. Not only did the petioner have standing to sue, but the federal question was substantial; in fact, the federal question was the pivotal point of the case. Furthermore, the instant case could not be decided on any other than constitutional grounds since the IRS based its actions on the constitutionality of the Louisiana community property law, citing articles 2404 and 2334 specifically as their support.

By deliberately ignoring and refusing to rule on the constitutionality issue raised by petitioner, the appellate court defaulted in the performance of its sworn duty to defend and support the Constitution. Then the appellate court sanctioned that unconstitutional law's being used by the respondent to deprive petitioner of her inalienable rights, by affirming the Tax Court's decision, using the "not clearly erroneous" rule.

III. The appellate court erred in affirming the Tax Court decision on the grounds that the trial judge's findings of fact were "not

clearly erroneous."

A. The petitioner presented the facts in her briefs, and the record will support those facts. Yet the judges responsible for writing the decision in the instant case chose to ignore or claim unawareness of the facts. When petitioner first read the trial court's decision, she was shocked. She had to read the decision three times to determine that it was actually coming from the judge who had heard the case - so completely did it support the respondent's brief, so completely did it ignore the trial record and the petitioner's brief.

And a careful look at the appellate court's decision and opinion would suggest that the petitioner's briefs fared no better there. Repeatedly petitioner has asked herself: "After all the trouble I went to, were they even read?"

True, this was pro se work and a tax case, and the judges are overworked and the dockets are overcrowded. In fact, shortly after she got the decision, the Fifth Circuit was split

in an effort to alleviate the problems of overwork and overcrowdedness. But that doesn't make petitioner's suffering any less. And after all, she did not have a choice of Circuits.

B. Petitioner had made a timely request for oral argument; respondent informed the court that he did not "believe oral argument would be of material assistance" to this court. Results? Petitioner's timely filed request for oral argument was simply ignored.

Yet, according to Rule 18, whenever the Court, sua sponte or on the suggestion of a party, concludes that a case is of such character as not to justify oral argument, the case may be placed on a separate summary calendar ...Notice in writing shall be given to the parties or their counsel.

Further, if the judges had any doubt about what petitioner was saying or about the facts presented, oral argument would have given her a chance to answer their questions in an effort to clear up the doubt. At any rate, reviewing

the record should have left them with the definite and firm conviction that a mistake had been committed. ¶52.03 (1)

C. Since the trial court had refused to consider the federal question which the petitioner had properly placed before it and which was pivotal to this case, and instead used Art. 2404 and Art. 2334 in support of its finding for the respondent - the "clearly erroneous" rule would not apply anyway. This rule does not apply when the lower court applies an improper legal premise in the course of its proceedings. Grant v. Smith (CA 5th, 1978) 574 F2d 252.

> And although the clearly erroneous standard governs the court of appeals review of a case in which the evidence consists of depositions and no live witnesses, the burden of establishing clear error is not as heavy as in the normal case, where the witness' credibility is assessed. Cooper v. Department of Navy of United States (CA 5th, 1979) 594 F2d 484.

The burden of establishing clear error was evidently placed on petitioner even though the trial court had applied an illegal premise, the trial court's findings of fact are not supported by the transcript and the record, the trial judge refers to

the "peculiar facts of this case" (Tr. 58) and calls it one of those "hard" cases in his Opinion, and petitioner's timely-filed request for oral argument was simply ignored.

III. The decision in this case properly belongs to this Forum and is ripe for judicial scrutiny.

Petitioner commenced this suit contending that by making the distinction between husband and wife, automatically granting him mastership and control over the community, with Art. 2404, the Louisiana "head and master" law unreasonably discriminates on the basis of sex in violation of the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment. In essence, the petitioner asserts that the discriminatory impact of the Louisiana "head and master" law which permits the IRS to hold petitioner tax liable for 1/2 of her husband's income, while it gives her husband complete and sole control over the community and even forbids the petitioner from asking for an accounting thereof, is clearly in violation of the Equal Protection Clause.

Additionally, it permitted her husband to encumber the community to pay the additional tax which

the IRS alleged her husband owed, although it prohibited the petitioner's likewise encumbering the community to pay the additional tax the IRS alleged she, separately and individually, owe on 1/2 of her husband's income.

The IRS further violates petitioner's constitutional right to due process and equal protection by deliberately ignoring the parts of the law intended to provide a semblance of checks and balance to the immense power the Codifiers had bestowed on the husband, the parts which said that the husband was the only proper party to sue for a community debt and that the wife's separate property could not be taken to satisfy a community debt. Not only has the IRS gone above and beyond the Louisiana law and determined that the petitioner should be held individually and separately liable for the tax on 1/2 of her husband's income, but the IRS insists that she has the burden of proving the total deductions to which her husband is entitled - in order to reduce her separate and individual liability for the tax on 1/2 of his income. Such action clearly denies petitioner due process and equal protection of the law.

Petitioner points out that classification based upon sex, like classification based upon race, alienage, and national origin, are inherently suspect and must therefore be subjected to closer judicial scrutiny. This the courts did not do. The Louisiana law which permitted the IPS to act thusly works an invidious discrimination in violation of the Constitution.

As the Court said in Kirchberg v. Feenstra, 100 S. Ct. 1849 (1981):

> ... As we have previously noted, the "absence of an insurmountable barrier" will not redeem an otherwise unconstitutionally discriminatory law. Trimble v. Gordon, 430 U.S. 762, 774 (1977). See Frontiero v. Richardson, 411 U.S. 677 (1973). Cf. Taylor v. Louisiana, 419 U.S. 522 (1975); Reed v. Reed, 404 U.S. 71 (1971). Instead the burden remains on the party seeking to uphold a statute that expressly discriminates on the basis of sex to advance an 'exceedingly persuasive justification' for the challenged classification. Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 273 (1979). See also Wengler v. Druggist Mutual Insurance Co. Because appellant has failed to offer such justification, and because the State, by declining to appeal from the decision below, has apparently abandoned any claim that an important government objective was served by the statute, we affirm the judgment of the Court of Appeals invalidating Art. 2404.

However in the instant case, where the petitioner raised the federal question, the question went unheeded. The law was not subjected to strict scrutiny, nor did the party seeking to uphold this statute that expressly discrimi-

nated on the basis of sex (the IRS -Respordent) offer such a justification. Instead, the Appellate Court used the "not clearly erroneous" rule to affirm the Tax Court's decision - even though the Tax Court had used the unconstitutional statute in support of its decision.

Furthermore, the Appellate Court in its per curiam opinion for the instant case says:

> Hall's reliance on Kirchberg as dispositive of this case is misplaced. The issue in the instant case is not who had control, but does the wife have a property interest in her husband's community income...

Petitioner disagrees. It is well settled and agreed on by the courts, and the IRS, that the taxpayer has a burden of proving his entitlement to deductions claimed. It is also well settled that the taxpayer can only be held liable for paying those Federal taxes for which he has an obligation under the law. To quote Judge Learned Hand:

> There is nothing sinister in arranging one's affairs to keep taxes as low as possible. Nobody owes or has any public duty to pay one penny more than the law demands.

So how, in the instant case, can the court rule that who had control[2] is not an issue? If the Colonists

[2] Physical control without legal responsibility has always been considered a dangerous situation.

had used such reasoning, there would have been no Boston Tea Party, and America would probably be just another British colony.

Ability to pay is the major postulate upon which Federal income tax is based. Under the Revenue Act of 1913, the individual was the sole taxation unit. In 1930, the Supreme Court held , in Lucas v. Earl, that earned income is taxable to the one who earns it. 281 U.S. 111, 74 L. 731, 50 Sup. Ct. 241 (1930).

Although married couples are not required to file joint returns, the choice to do so is available. Interral Rev. Code, Sec. 6013 (A) permits husband and wife to file single or joint tax returns. They have a choice: jointly or separately, whichever saves them more tax money.

In the instant case, the IRS forgets its admission in Bender v. Pfaff, 282 U.S. 128, that:

> Under the laws and judicial decisions of the State of Louisiana, the husband's interest in the community income is such that he should properly be required to report the entire amount in his return; the wife's interest is not such that she should be permitted to report one-half of the community income in her return. Citing numerous statutes and decisions *** [S]he can not during the existence of the community substitute her management for that of the husband

or demand any part of the community income for her own use. La. Rev. Civ. Code, Arts. 123, 150, 155, 160, 2402, 2410, 2425, 2430, 2446; La. Code of Practice, Art. 105; Gastauer v. Gastauer, 131 La. 1; Viguerie v. Viguerie, 133 La. 406; Sroddy v. Brashear 13 La. Ann. 469.

in its haste to get more money from petitioner than is rightfully due.

In the case of Pfaff and Bender, Pfaff and his wife had filed separate returns, each for one-half of the total income for the year 1926 (which was the husband's income). The government refused to accept payment upon the basis cited above, and required Mr. Pfaff to pay taxes on the whole as his individual income, with the result that the amount was increased by $1,348.50.

Pfaff took the case to District Court where the court held that under the Louisiana law the spouses are entitled to file separate returns, each of and under 210 (a)(4) and 211 (a) of the Rev. Code 1926, and the Appellate Court for the 5th Circuit affirmed. On November 24, 1930, the Supreme Court, after reviewing the case, affirmed the lower courts' decision, making it possible for the Pfaff's to recover the $1,1348.50 additional assessment they had paid.

The IRS's argument in Pfaff could well be used by the petitioner in instant case. The IRS's motive is the same in both cases: to get more money from the taxpayers.

In Pfaff, where only the husband worked and the couple had freely elected to split husband's income because it would be to their tax advantage, the courts concurred.[3] In the instant case, we are not talking about one income but about two separate incomes. Both petitioner and her husband worked outside the home and each filed a separate return. Even though a taxpayer filing as "married, filing separate" pays the highest possible tax rate,[4] the petitioner, knowing her situation and her priorities, had elected to follow this course.

But the IRS, having decided on a scheme by which they could extract even more money from petitioner,[5] put their plan into operation.

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[3] The courts did not say the Pfaffs must split the husband's income; the courts said they were entitled to split husband's income (and save $1, 348.50).

[4] The two individuals treated most kindly by the IRS Code are the surviving spouse and the married taxpayer whose spouse has no income subject to tax. The Code permits use of the lowest tax rate table by such married taxpayer however many thousands of dollars of tax-exempt income his spouse may have, and without regard to need.

[5] See p. 9 of Petitioner's Brief to Tax Ct., and her subsequent briefs.

also

Petitioner asserts that the IRS infringed on the right of privacy in marriage by dictating the terms that she must file a joint return or what in effect amounts to a "joint" return, that she must be able to substantiate the total tax deductions allowable to her husband (or suffer the consequences), and by attempting to pit the husband against the wife in this tax controversy.

It is well-recognized that rights associated with the status of marriage are deemed fundamental or implicit in the concept of ordered liberty, and that any state regulation of privacy within the marriage relationship must be justified by a compelling state interest.

If the IRS wants to regulate and dictate the terms of petitioner's marriage and the role that the petitioner must play to the extent that it is doing, if the IRS wants to pit husband against wife to help further the IRS's end (which is to get more money...), there should be some rational or compelling state reason for doing so. Whether the petitioner and her husband filed seperate returns on their respective incomes or whether they elected to file a joint

return or their combined earnings - they still would have been paying taxes based on the total amount taxable. To deny petitioner the freedom of choice afforded other taxpayers is , again, to deny petitioner due process and equal protection under the laws.

Petitioner also calls attention to the difference in the way the courts reacted to Barbara Hansen's request for a "theft deduction", as contrasted with the way they reacted to petitioner's request. Petitioner does not argue that Hansen was not entitled to the theft deduction allowed. Petitioner does assert that the facts show the petitioner to be even more entitled to claim a theft deduction.

The petitioner further alleges that the jurisprudence on the Hansen, Ragur, and Mitchell cases appears to have taken a chauvinistic attitude in its sympathetic rulings which seem to rest on the fact that those women were totally dependent upon their husbands for income, etc. This, by fact, is a condition which excludes most black women from similar treatment by virtue of the fact that in our society few black men earn an income sufficient to support the needs of the family. Since the court has failed to speak in behalf of the

black working woman, its sympathetic rulings are, for lack of a better word, "lily-white."

In Hogan v. Miss. Univ. for Women, the court said "We recognize that racial discrimination requires the application of a higher level of scrutiny than does sex discrimination." (Emphasis mine)

The Supreme Court has agreed to hear Hogan, a suit against a state-supported school, by an adult male who was interested in pursuing an education in nursing but who was denied admission because of his sex. Both the District Court and the Appellate Court for the Fifth Circuit held that maintenance of a state supported university that accepted only female applicants violated the Fourteenth Amendment right to equal protection as an otherwise qualified applicant.

Since certiorari was granted in Hogan, it should be granted in instant case which also deals with sex-gender discrimination in violation of due process and equal protection of the laws. In fact, the Fifth Circuit's comments in Hogan are quite relevant for this case. There the court said:

> While at times in our history the impact of the Equal Protection Clause on gender-based discrimination was less than clear, that is not so today. In its most recent pronouncements on the subject, the Supreme Court has unanimously affirmed this court's judgment in Kirchberg v. Feenstra, 609 F. 2d 727, 734 (5th Cir. 1979). There we held that gender-based classifications must be substantially related to important governmental objectives in order to withstand constitutional challenge. In the Supreme Court's words, 'express gender-based discrimination [has been] found unconstitutional absent a showing that the classification is tailored to further an important governmental interest.' Kirchberg v. Feenstra, ___ U.S. _____, 101 S. Ct. 1195, 1198, 67 L. Ed. 2d 428, 433 (1981).

The Court unanimously sustained a sex discrimination claim on equal protection grounds in Weinberger v. Wiesenfeld, 420 U.S. 636 (1975) which challenged 42 U.S.C. 402(g), a provision of Social Security Act awarding survivors' benefits when a covered wage earner dies. Under the statutory scheme, Mr. Wiesenfeld received survivor's benefits for his infant son, but not for himself. The Court found that schere an unjustifiable discrimination against covered women wage earners by affording them less protection for their survivors than that provided for men wage earners. Justice Brennan found the statutory distinction based on "archaic and overbroad" generalization not "tolerated under the Constitution;" the generalization that male

workers's earnings are vital to the support of their families, while the earnings of female wage-earners do not significantly contribute to their families' support" ...such a gender-based generalization cannot suffice to justify the denigration of the efforts of women who do work and whose earnings contribute significantly to their families' support." Like the statute in Frontiero , this provision deprived "women of protection for their families which men received as a result of their employment." And the Constitution did not permit a "gender-based differentiation that results in the efforts of women workers required to pay social security taxes producing less protection for their families than is produced by the efforts of men."

CONCLUSION

The issues in this case are ripe for judicial scrutiny. They cannot be ignored and they will not just disappear. Louisiana has changed its community property law somewhat, but even those changes do not provide relief for the petitioner in the instant case.

Persons clamoring for the passage of the ERA have argued that such an amendment is the only way for women to get justice and equal treatment under the law. Those who disagree, arguing that present laws are sufficient to afford women protection, should look at the instant case.

Here there is a fundamental and unresolved issue of a constitutional nature. There has been a conflict of opinions in the lower courts on the matter. Individual rights are clearly involved. The complaining party, the petitioner, has suffered, is suffering, and will continue to suffer terribly with no hope for relief unless the highest tier of justice responds. By considering this case, the Supreme Court will be well within its appropriate sphere of action, and only involving itself in a decision that properly belongs to this Forum.

This is especially true since the Appellate Court for the Fifth Circuit has issued a decision in this case which is contradictory to its decisions in Kirchberg and in Hogan. Not only did the Supreme Court grant certiorari in both of those cases, but the Court affirmed the Kirchberg decision, and the

Court's decision in Hogan is still pending.

Petitioner further asserts that the rights infringed upon in the instant case are even more fundamental than those infringed upon in either Kirchberg or Hogan. Much more than money is at stake.

Equal justice under the law is the very foundation of our legal system, but court decisions (like the instant one) have amply demonstrated that women do not now enjoy equal justice, and in some cases (again, like the instant one) women find that they are not "citizens" or "persons" in the eyes of the law.

The happiness and integrity of marriage and the family and consequently of society may best be served by not giving mere lip service to the ideal. If the wife suffers by the courts, then so does the family and the Nation. For as Harriet Spiller Daggett said: "The center of gravity in the traditional family is the wife and mother, and if she is denied her status, the family unit will inevitably suffer."

The Tax Court refers to this case as one of the "hard cases" and points out, in its Opinion, that since

the Supreme Court has not deemed to act on the issue - the Tax Court has not deemed it advisable to act either. For this and all of the aforementioned reasons, the petitioner respectfully requests a writ of certiorari or a reversal of the lower courts' decision.

Respectfully submitted,

Geraldine G. Hall

Geraldine G. Hall
Pro se

Appendix

APPENDIX A

JUDGMENT

United States Court of Appeals for the Fifth Circuit.

Geraldine G. Hall, Appellant, vs. Commissioner of Internal Revenue, Appellee. No. 81-4085.

Filed: Sept. 15, 1981.

Before Ainsworth, Reavley and Randall, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States Tax Court, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the decision of the said Tax Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that the petitioner pay to respondent the costs on appeal to be taxed by the Clerk of this Court.

Sept. 15, 1981

ISSUED AS MANDATE: Oct. 8, 1981

APPENDIX B

Geraldine G. Hall, Petitioner/Appellant, v. Commissioner of Internal Revenue, Respondent/Appellee. No. 81-4085. Summary Calendar. DO NOT PUBLISH.

United States Court of Appeals, Fifth Circuit.

Before Ainsworth, Reavley and Randall, Circuit Judges.

PER CURIAM:

Geraldine G. Hall appeals from a decision of the United States Tax Court that Hall must pay an income tax deficiency for 1976. The tax court held that Hall was required to include in her separate income tax return one-half of the total community income earned by her and her husband during 1976. We affirm.

Hall argues that the dispositive issue in this case is the constitutionality of the Louisiana head and master provision, an issue she claims was not addressed by the tax court. The head and master provision grants to the husband the sole administration of community property. La. Civ. Code. Ann. art. 2404 (West 1971).[1] As Hall correctly notes, this court held the head and master provision unconstitutional in Kirchberg v. Feenstra, 609 F. 2d 727 (5th Cir. 1979) aff'd., 100 S. Ct. 1849 (1981).

Hall's reliance on Kirchberg as dispositive of this case is misplaced. The issue in the instant case is not who had control, but does the wife have a property interest in her husband's community income.[2] It is well settled that the determination of whether a property interest constitutes income is a question of federal law, while the determination of what interest a taxpayer has in particular property depends on state law. Poe v. Seaborn, 282 U. S. 101, 109-10, 51 S. Ct. 58, 58-58 (1930). In the context of state community property laws, when the wife has a present, undivided one-half interest in the community income, the wife is taxed on one-half of that community income. Poe v. Seaborn, id.; Bender v. Pfaff, 282 U.S. 127, 51 S. Ct. 64 (1930); accord, United States v. Mitchell, 403 U.S. 190, 201, 91 S. Ct. 1763, 1770 (1970). Most importantly, these principles apply notwithstanding the fact that the state has vested the managerial rights and powers in the husband. Poe v. Seaborn, 282 U.S. at 58-59; accord, United States v. Mitchell, 403 U.S. 190, 91 S.Ct. 1763 (1970). Thus, regardless of the existence of a head and master provision, if a wife has a vested undivided interest in one-half of the taxable property acquired

during marriage, including the other spouse's earnings, a wife can be taxed on that property interest. Because Hall has under Louisiana law a one-half community property interest in the income of her husband, the tax court properly held her accountable for that interest. La. Civ. Code Ann. arts. 2334, 2399-2402 (West 1971).

Hall also argues that holding a wife taxable on one-half of the community income earned by the husband places stress on her marriage and that the obligation to pay taxes should not extend to income earned and deductions claimed by the other spouse. In essence, Hall attacks the community property system adopted by the state of Louisiana as applied to her, calling it unjust. We only repeat that the state chooses the property system it will follow and determines what interest a taxpayer has in an item of property. Although the court sympathizes with Hall, "our role in tax litigation is to adhere to the terms of the statutes whose burdens may not always be equitable." Brent v. Commissioner, 630 F. 2d 356, 359 (5th Cir. 1980); see also, United States v. Mitchell, 403 U.S. at 205, 91 S. Ct. at 1772

(despite the hardships, the remedy is in legislation).

Finally, Hall argues that the tax court erred in not allowing her a theft deduction under 26 U.S.C. 165(c)(3). In Bagur v. Commissioner, 603 F. 2d 491, 501-03 (5th Cir. 1979), this court held that where the husband intentionally and permanently deprived the wife of her share of community income, which may be inferred by the husband's misappropriation of income for his personal use, the wife is entitled to a theft deduction despite the Louisiana head and master provision. In the instant case, the tax court found no such intent to deprive Hall of her share of community income. The review of this court of the tax court's findings of fact is limited to determining whether the fact findings are clearly erroneous. Fed. R. Civ. P. 52(a). After reviewing the entire record, we hold that the fact findings are not clearly erroneous.

Accordingly, the judgment of the tax court is

AFFIRMED.

FOOTNOTES

1. Effective January 1, 1980, article 2404 was repealed and replaced with a provision granting each spouse equal control over the disposition of of the community estate. La. Civ. Code Ann. art. 2347 (West. Cum. Supp. 1981)

2. The applicable community property laws appear in La. Civ. Code Ann. arts. 2325-2437 (West 1971) (current version at West Cum. Supp. 1981). See generally Judge Wisdom's scholarly opinion in Bagur v. Commissioner, 603 F. 2d 491 (5th Cir. 1979), for a discussion of the nature of property interests under the Louisiana community property laws.

APPENDIX C

Decision

Pursuant to the opirion of the Court filed Sept. 22, 1980 and incorporating herein the facts recited in the respondent's computation as the findings of the court, it is

ORDERED AND DECIDED: That the following statement shows the petitioner's income tax liability for the taxable year 1976:

Tax liability		$2,140.00
Tax per return		1,171.00
Deficiency(to be assessed)		$ 969.00
Tax liability		$ 2,140.00
Net payments:		
6/21/77	$1,380.51	
4/15/77 (Statutory date) Transfer of Credit	762.75	
Total payments	$2,143.26	
Less refund 8/8/77	209.51	
Net payments		$1,933.75
Deficiency (to be paid)		$ 206.25
Addition to the tax under 6651 (a) of the Internal Rev. Code of 1954		NONE

(Signature) Samuel B. Sterrett
JUDGE

Entered: Dec. 30, 1980

APPENDIX D

Memorandum of Decision

United States Tax Court.

Geraldine G. Hall, Petitioner, v. Commissioner of Internal Revenue, Respondent. Docket No. 6743-79.

Filed September 22, 1980.

Petitioner was married and domiciled in Louisiana. She filed her income tax return as "married filing separately." Held: Under Louisiana community property law, petitioner is required to report one-half of the total income of the marital community and is entitled to one-half of the total allowable deductions and credits.

Geraldine G. Hall, pro se.

Joseph P. Goeke, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

STERRETT, Judge: Respondent determined a deficiency in petitioner's Federal income tax for the taxable year 1976 in the amount of $1,321.00 and asserted an addition to tax in the amount of $330.39 under section 6651(a), I.R.C. of 1954, for failure to file a timely return without reasonable cause. After post-trial re-examination of items in dispute and concessions by the parties, the amount of deficiency in issue is $969.00 against which an increase in withholding credits of $762.75 results in an underpayment of $207.25. Respondent now concedes that petitioner is not liable for the addition to tax.

Therefore, the issues remaining for decision are: (1) whether, under Louisiana community property laws, petitioner must compute gross income based upon one-half of the total community income received by her husband and her in 1976, and (2) whether petitioner is entitled to itemized deductions in excess of the amount allowed by respondent.

FINDINGS OF FACT

Petitioner resided in Baton Rouge, Louisiana at the time the petition herein was filed. She filed her Federal income tax return as "married filing separately" for the calendar year 1976 with the Internal Revenue Service Center at Austin, Texas. Respondent has offered into evidence the 1976 tax returns of petitioner and Mr. Claudius A. Hall. Petitioner does not contend that the returns are not those of her husband and her. We therefore find that the returns submitted were those of petitioner and her husband. Such returns are incorporated herein by this reference.

Petitioner was married to Claudius A. Hall under the laws of Louisiana throughout 1976. They were not legally separated or divorced at any time during 1976

and resided together with their children. Petitioner and her husband divided the responsibility for paying household expenses. For instance, petitioner's husband paid the rent and utility bills while petitioner paid for food and other necessities for herself and the children.

During the year in issue, petitioner earned $11,454.14 as a teacher at Southern University, Baton Rouge, Louisiana. Claudius A. Hall earned a total of $19,600 from the following sources:

Point Coupee Parish School Bd.	12,306
Pinkerton, Inc.	7,264
Interest	30
	$19,600

Claudius A. Hall held two jobs during 1976. He normally would drive to his teaching job in the morning and return to his home in the afternoon for a total distance of about 60 miles. On days when he worked as a night watchman at a local bank, Mr. Hall normally would make a brief stop at his home, and then would drive about 10 miles to his job. At the end of the evening, he would drive the same distance back to his home.

OPINION

The first issue for our consideration is whether petitioner is liable for tax on one-half of all of the community income during the year in issue. It is well settled under Louisiana law that the earnings of each party to a marriage during the term of the marriage, are community property. Louisiana Civ. Code Arts. 2334, 2402.[1] The nature of the community interest was described in Phillips v. Phillips, 160 La. 813, 825-826, 107 So. 584, 588 (1926), as follows:

> The wife's half interest in the community property is not a mere expectancy during the marriage; it is not transmitted to her by or in consequence of a dissolution of the community. The title for half of the community property is vested in the wife the moment it is acquired by the community or by the spouses jointly, even though it be acquired in the name of one of them.

Therefore, under Louisiana law, a wife owns a vested one-half interest in the community, and she has "the obligation, not merely the right, to report half the community income" on her separate income tax return. U. S. v. Mitchell, 403 U.S. 190, 196 (1971); U.S. v. Malcolm, 282 U.S. 792, 794 (1931).

Petitioner argues that because she has no control over her husband's earnings, expenditures or encumbrances,

she should not be taxed on one-half of her husband's income. While it is true that the Louisiana Civil Code places the husband at the head of the marital partnership,[2] the wife's interest in community property is vested immediately on acquisition and is equal to her husband's interest on dissolution. The wife's ownership rights are protected by Louisiana law. For example, while a husband can sell community property without his wife's consent, a wife has the right to sue her husband or his heirs for alienation of community property made in fraud. Louisiana Civil Code Art. 2404. Alternatively, a wife may demand an accounting for the husband's separate enrichment from community property. Creech v. Capital Mack, Inc., 287 So. 2d 497, 508, (La. 1973). See also Succession of Wisner, 203 La. 649, 665-669, 14 So. 2d 475, 480-482 (1943). Because Federal tax liability follows ownership as determined by state law, United States v. Mitchell, supra at 197, and is not determined by which spouse controls the property, we hold that each spouse must report one-half of the community income.

While petitioner must report one-half of the community income, she claims that she is also entitled to a

deduction under section 165 (c)(3) for the portion of her husband's earnings to which she had a legal ownership claim but to which her husband never gave her possession. Petitioner relies on the interpretation of Louisiana property law and Federal tax law as set forth by Judge Wisdom in Bagur v. Commissioner, 603 F. 2d 491 501-503 (5th Cir. 1979), to afford her a measure of relief. In Bagur, parties to the marriage were living separate and apart. The husband appropriated community property for his own use. The wife had no knowledge of the amount of her husband's income or the uses to which it was put. She had absolutely no control over his income and derived no benefit therefrom. The Circuit Court held that it could not find that the husband was a thief because of the La. "head and master" provision, see n. 2, supra, but that the theft loss deduction was controlled by Federal tax law. A theft loss required a showing of an intent to deprive a wife permanently of her share of community income. This could be inferred from "a husband's wanton appropriation of community assets in pursuit of his own pleasure or needs." Bagur v. Commissioner, supra at 502.

In the instant case, petitioner does not dispute

that she was married to Claudius A. Hall throughout the year in question. Unlike the situation in Bazur v. Commissioner, supra, the record herein shows that petitioner and her husband shared a single residence and divided the costs of maintaining the household. Even if it is true that petitioner had no knowledge of her husband's earnings or outside expenditures, it cannot be said that she did not enjoy the fruits of his earnings -- one-half of which she owned under Louisiana community property law. Furthermore, she has not shown that Mr. Hall wantonly appropriated community assets for his personal pleasure. While we sympathize with the picture of the unhappy marital situation painted by petitioner, we are forced to conclude that petitioner's contention is without merit. Petitioner is not entitled to take a deduction for theft loss in the amount of her husband's income that she is required to report.

Petitioner asserts that to find her liable for tax on the portion of community income earned by her husband would be unfair because she had no access to her husband's records of income or deductions at the time she was preparing her return. These facts, even if true, would relate to whether petitioner acted reasonably

under the additions to tax provisions and not to the legal issue of ownership of income. Respondent, however, has conceded the issue of any addition to tax under section 6651 (a) for failure to file a timely return, and no other addition is in issue. We therefore find petitioner's argument inapposite here.

Finally, petitioner argues that economic and social patterns have changed since the enactment of community property laws. More wives are working in the business world and are serving as the "breadwinner" of the family. Such changes have accentuated the potential for inequities in the Louisiana system that makes the husband the "head and master" of the community. Again, however, we are bound by a long line of Supreme Court decisions and by the principle established in Golsen v. Commissioner, 445 F. 2d 985 (10th Circuit 1971) cert. den. 404 U.S. 940 (1971), to hold that "ownership vel non is a sufficient and constitutional basis for imposing federal tax liability." Bagur v. Commissioner, supra at 500. See also Poe v. Seaborn, 282 U.S. 101, 109-110 (1930). Although changes

in property laws may be appropriate to keep pace with social developments, it is the role of the state legislatures to make such changes. As the Supreme Court stated in United States v. Mitchell, supra at 205, "It must be conceded that these cases are 'hard' cases and are exceedingly unfortunate***. ***The law, however, is clear. The taxes were due.*** The 'fault', if fault there be,*** flows from the settled principles of the community property system." We will not declare the Louisiana community property system or the automatic male mastership of the legal community in La. unconstitutional when the United States Supreme Court since at least the year 1900 has been presented with similar factual settings and has failed to so act. Hanser v. Commissioner, T.C. Memo. 1977-163.

While petitioner is responsible for one-half of the total community income, she is also entitled to one-half of the deductions and credits that are allowable to the community. Johnson v. Commissioner, 72 T.C. 340, 347 (1979). Petitioner has the burden to put forth evidence to support each deduction or credit claimed. Rule 142(a), Tax Court Rules of Practice and Procedure. Petitioner was given the opportunity

to substantiate her deductions before trial, at trial, and after trial. Her husband's return was audited and he was given the opportunity to substantiate his deductions. In addition, in the interest of fairness, petitioner was given the chance after trial to submit proof with respect to deductions disallowed on Mr. Hall's return. Based upon evidence produced at that time, respondent conceded additional deductions. The only deductions upon which evidence was presented but still disallowed by respondent were as follows:

	Amount	Purpose
Check to YWCA	$100.00	Family membership
Fee paid to Guaranty Bank and Trust	6.00	Overdraft fee on Claudius Hall checking acct.
Check to (?) Claudius A. Hall to Usher Bd. Mt. Zion	10.00	Part-payment for usher's uniform
Cost of daily newspaper	23.40	Subscription

We note that only the deductibility of these items and not the amount thereof is in issue.

Petitioner claims that the $100 paid to the YWCA was a charitable contribution. Respondent concedes that a separate $15 payment in excess of the $100 annual membership dues is deductible as a charitable con-

tribution under section 170, but asserts that the $100 dues was a personal expense and is therefore not deductible. At trial, petitioner testified that she paid the $100 as dues. When she realized that no one in the family would use the facilities, she did not attempt to get the dues refunded. Rather, she claimed that she left the money as a contribution to the YWCA but received no acknowledgement receipt. Where dues paid to a charitable organization are reasonably commensurate with the value of benefits associated with such membership, no portion of the dues is deductible as a charitable contribution. The mere fact that petitioner and her family chose not to use the facilities of the YWCA does not permit her to take a charitable deduction. In our opinion, petitioner has failed to prove that the dues payment was in reality a contribution, and was not made in return for the quid pro quo of the right to use the facilities and programs of the YWCA.

With respect to the fee paid on overdraft checks by Mr. Hall, the payments are not interest payments. They are in the nature of a service charge for handling and returning of checks. Such fees on a personal checking account are personal expenses and hence nondeductible.

Section 262. Similarly, Mr. Hall's $10 payment to the Usher's Board-Mt. Zion Baptist Church was not part of the Halls' charitable contribution to the church. The payment was for uniforms that Mr. Hall wore as a church usher, and therefore was a personal expense. Sect. 262. The cost of the daily newspaper was also a personal expense. It was not an ordinary and necessary expense of either petitioner's or Mr. Hall's job. Therefore, it is not deductible as a business expense under sec. 162.

Finally, Mr. Hall claimed on his return a deduction of $994 for travel expenses. On audit, respondent allowed only $448.50. The only relevant evidence put forth at trial related to Mr. Hall's commuting expenses. It is well-accepted that commuting expenses are not deductible. We therefore sustain respondent's determination that Mr. Hall was entitled to $448.50 as a deduction for travel expense. Accordingly, petitioner is allowed one-half of that amount as a deduction in computing her adjusted gross income. See section 62 (2) (C).

Decision will be entered under Rule 155.

Footnotes

[1] For instance, with respect to the marital community, the Louisiana Code provides:

> ***This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estate which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way.***

La. Civ. Code Art. 2402.

[2] See La. Civil Code Art. 2404, which states in part that "[t]he husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife."

Opposition

Supreme Court, U.S.
FILED
MAR 30 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1571

In the Supreme Court of the United States

OCTOBER TERM, 1981

GERALDINE G. HALL, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
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MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The questions presented by the petition in this federal income tax case are: (1) whether petitioner, a resident of Louisiana, was required to include on her separate income tax return one-half of the total community income which she and her husband received during 1976; and, (2) whether the community property laws of the State of Louisiana, as applied to this case, are unconstitutional. The decision below upheld the Commissioner of Internal Revenue's position that petitioner was required to include one-half of the community income, as well as one-half of the community deductions, on her separate return. Moreover, both courts below rejected petitioner's claim that the community property laws of the State of Louisiana are unconstitutional, as applied to this case (Pet. App. B1-B4, D4-D13).

The pertinent facts may be summarized as follows: For the entire calendar year 1976, petitioner resided with her husband, Claudius A. Hall, and their children in Baton

Rouge, Louisiana. Throughout this period, petitioner and her husband were legally married and jointly shared the responsibility of paying the household expenses (Pet. App. D2-D3, D6-D7). During 1976, petitioner was employed as a teacher by Southern University at Baton Rouge where she earned $11,454.14. For this same period, petitioner's husband held two jobs and earned a total of $19,600 (Pet. App. D3). For 1976, petitioner and her husband filed separate federal income tax returns, on which each claimed the filing status of a married individual filing separately. She reported $11,454.14 in gross income while her husband reported $19,600. Both spouses itemized their deductions (Exhs. A, B).[1] On audit, the Commissioner determined that petitioner and her husband each should have included one-half of the total community income, and community deductions, on their separate returns (Pet. App. D1, D2). The Tax Court upheld this determination (Pet. App. D1-D13), and the court of appeals affirmed *per curiam* (Pet. App. B1-B5).[2]

1. The decision below correctly held that petitioner was required to include in her gross income one-half of the total community income which was received by her and her husband during 1976. Under the laws of the State of Louisiana, a wife has a vested, undivided interest in one-half of all property, including her husband's earnings, acquired during their marriage. La. Civ. Code Ann. arts. 2334, 2399-2402 (West 1971).[3] It has therefore long been settled

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[1]"Exh." refers to the exhibits introduced in the Tax Court and filed in the court of appeals.

[2]Contrary to petitioner's assertions (Pet. 9, 10, 12), the court of appeals expressly applied the "clearly erroneous" standard of review only to issues of fact and not to issues of law (Pet. App. B4).

[3]In 1979, Louisiana completely revised its community property statutes. See La. Civ. Code Ann. arts. 2325-2437 (West Cum. Supp. 1982). Effective January 1, 1980, the various provisions relied upon by both parties here were repealed. But, because this case involves income and deductions that are attributable solely to 1976, this case is governed by

that the wife is responsible for reporting one-half of the community income. *E.g., United States* v. *Mitchell*, 403 U.S. 190, 194-206 (1971); *Bender* v. *Pfaff*, 282 U.S. 127, 131-132 (1930). Of course, a wife is also entitled to one-half of the community deductions. *E.g., Johnson* v. *Commissioner*, 72 T.C. 340, 347 (1979). Petitioner argues (Pet. 13-27) that she should be allowed to avoid the obligation of reporting one-half of her husband's earnings because the requirement to do so is unfair. But, as this Court pointed out in *United States* v. *Mitchell, supra*, only Congress or the State of Louisiana is empowered to change the law in this respect. *United States* v. *Mitchell, supra*, 403 U.S. at 205-206; *Brent* v. *Commissioner*, 630 F. 2d 356, 359-361 (5th Cir. 1980). While there may be an exception where the wife is entitled to a theft loss deduction for those rare cases where the husband has misappropriated income which the wife is required to report (*Bagur* v. *Commissioner*, 603 F. 2d 491, 501-503 (5th Cir. 1979)), that exception is not applicable to the facts of this case. Here, petitioner and her husband lived together, and jointly shared the household expenses (Pet. App. D2-D3, D7). Hence, there is no evidence that she did not receive her full share of the benefits attributable to the community income.

2. Citing *Kirchberg* v. *Feenstra*, 450 U.S. 455 (1981), aff'g 609 F. 2d 727 (5th Cir. 1979), petitioner argues (Pet. 8, 9, 13-17) that Louisiana's community property laws, as applied here, are unconstitutional. In *Kirchberg* v. *Feenstra, supra*, this Court held unconstitutional Article 2404 of the Louisiana Civil Code (West 1971), commonly referred

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the prior statutes. Nevertheless, under the amended statutes, each spouse is given a present interest in one-half of the community estate, which still is defined to include each spouse's income. La. Civ. Code Ann. arts. 2334-2340 (West Cum. Supp. 1982). Thus, the result in this case is the same under either the new or the old statutory scheme.

to as the "head and master provision." Article 2404 provided that, in the absence of an affirmative election to the contrary, the community estate was to be managed exclusively by the husband. This Court concluded that Article 2404 impermissibly discriminated against the wife, solely on the basis of gender, in violation of the Fourteenth Amendment. 450 U.S. at 456, 461-463. But neither this Court nor the court of appeals invalidated Louisiana's entire community property system. To the contrary, that decision addressed only the provision appointing the husband as sole manager of the community. Moreover, as the court of appeals had previously noted in *Bagur* v. *Commissioner, supra,* 603 F. 2d at 499, a finding that Article 2404 "is unconstitutional would mean that the wife would have greater control over community income. Unfortunately for the taxpayer wives, that would strengthen the case against them."

Finally, petitioner contends that she cannot constitutionally be taxed on one-half of his earnings because she had no control over her husband's earnings. But in the absence of some showing that petitioner's husband managed the estate to her detriment, or that she did not enjoy her full share of community income, there is no basis for her claim. *United States* v. *Mitchell, supra,* 403 U.S. at 201. See also *Bagur* v. *Commissioner, supra,* 603 F. 2d at 499-500.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

MARCH 1982

DOJ-1982-03